

or other structures, and employees engaged in dredging operations or in the digging or processing of sand, gravel, or other materials are not employed as seamen within the meaning of the Act but are engaged in performing essentially industrial or excavation work (*Sternberg Dredging Co. v. Walling*, 158 F. 2d 678; *Walling v. Haden*, supra; *Walling v. Bay State Dredging & Contracting Co.*, 149 F. 2d 346; *Walling v. Great Lakes Dredge & Dock Co.*, 149 F. 2d 9, certiorari denied 327 U.S. 722). Thus, “captains” and “deck hands” of launches whose dominant work was industrial activity performed as an integrated part of harbor dredging operations and not in furtherance of transportation have been held not to be employed as seamen within the meaning of the Act (*Cuascut v. Standard Dredging Corp.* 94 F. Supp. 197).

**§ 783.35 Employees serving as “watchmen” aboard vessels in port.**

Various situations are presented with respect to employees rendering watchman or similar service aboard a vessel in port. Members of the crew, who render such services during a temporary stay in port or during a brief lay-up for minor repairs, are still employed as “seamen”. Where the vessel is laid up for a considerable period, members of the crew rendering watchman or similar services aboard the vessel during this period would not appear to be within the special provisions relating to seamen because their services are not rendered primarily as an aid in the operation of the vessel as a means of transportation. See *Desper v. Starved Rock Ferry Co.*, 342 U.S. 187. Furthermore, employees who are furnished by independent contractors to perform watchman or similar services aboard a vessel while in port would not be employed as seamen regardless of the period of time the vessel is in port, since such service is not of the type described in § 783.31. The same considerations would apply in the case of members of a temporary or skeleton crew hired merely to maintain the vessel while in port so that the regular crew may be granted shore leave. On the other hand, licensed relief officers engaged during relatively short stays in port whose duty it is to maintain the

ship in safe and operational condition and who exercise the authority of the master in his absence, including keeping the log, checking the navigation equipment, assisting in the movement of the vessel while in port, are employed as seamen within the meaning of the exemptions. The same may be true of licensed relief engineers employed under the same circumstances whose duty it is to maintain the ship’s auxiliary machinery in operation and repair (see *Pratt v. Alaska Packers Asso.* (N.D. Calif.) 9 WH Cases 61).

**§ 783.36 Barge tenders.**

Barge tenders on non-selfpropelled barges who perform the normal duties of their occupation, such as attending to the lines and anchors, putting out running and mooring lights, pumping out bilge water, and other similar activities necessary and usual to the navigation of barges, are considered to be employed as “seamen” for the purposes of the Act unless they do a substantial amount of “non-seaman’s” work (*Gale v. Union Bag & Paper Corp.*, 116 F. (2d) 27 (C.A. 5, 1940), cert. den. 313 U.S. 559 (1941)). However, there are employees who, while employed on vessels such as barges and lighters, are primarily or substantially engaged in performing duties such as loading and unloading or custodial service which do not constitute service performed primarily as an aid in the operation of these vessels as a means of transportation and consequently are not employed as “seamen” (*McCarthy v. Wright & Cobb Lighterage Co.*, 163 F. (2d) 92; *Anderson v. Manhattan Lighterage Corp.*, 148 F. (2d) 971, certiorari denied 326 U.S. 722; *Woods Lumber Co. v. Tobin*, 20 Labor Cases 66, 640 (W.D. Tenn, 1951), aff’d, 199 F. (2d) 455). Whether an employee is on board a vessel primarily to perform maritime services as a seaman or loading and unloading services typical of such shore-bases personnel as longshoremen is a question of fact and can be determined only after reviewing all the facts in the particular case.

**§ 783.37 Enforcement policy for non-seaman’s work.**

In the enforcement of the Act, an employee will be regarded as “employed as a seaman” if his work as a whole

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meets the test stated in § 783.31, even though during the workweek he performs some work of a nature other than that which characterizes the service of a seaman, if such nonseaman's work is not substantial in amount. For enforcement purposes, the Administrator's position is that such differing work is "substantial" if it occupies more than 20 percent of the time worked by the employee during the workweek.

### WHAT IS AN "AMERICAN VESSEL"

#### § 783.38 Statutory definition of "American vessel".

The provisions of section 6(b)(2) prescribe special methods for computing minimum wages and hours worked under the Act which are applicable only to seamen who are employed on American vessels. An "American vessel", which would appear to signify a vessel of the United States as distinguished from a foreign vessel, "includes", under the terms of the definition in section 3(p) of the Act, "any vessel which is documented or numbered under the laws of the United States." The Department of the Treasury, Bureau of Customs and the United States Coast Guard, respectively, are responsible for documentation and numbering of vessels.

#### § 783.39 "Vessel" includes all means of water transportation.

Since the Act does not define "vessel" it is appropriate to apply the definition of "vessel" as set forth in the United States Code (1 U.S.C. 3). The Code defines "vessel" as including "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water". But the Federal Boating Act of 1958, (under which the U.S. Coast Guard is responsible for numbering vessels) and the Documentation Regulations administered by the Bureau of Customs, utilize this basic definition, with the addition of specific exclusions for "seaplanes" and "aircraft" (46 U.S.C. 527; 19 CFR 3.1(a)).

#### § 783.40 "Documented" vessel.

A vessel "documented \* \* \* under the laws of the United States" is typically

a vessel which has been registered, enrolled and licensed, or licensed by the Bureau of Customs under the laws of the United States (46 U.S.C. 11, 193, 251-252, 258, 840). Although Bureau of Customs regulations provide for three types of documentations, distinctions between the categories of vessels subject to them are immaterial for the purposes of the Fair Labor Standards Act, since a vessel with any of the three kinds of documentation is an "American vessel" within the section 3(p) definition. Generally, any vessel of five net tons or more which is owned by a citizen of the United States is "entitled to" documentation. Complete information on the documentation requirements may be found in 19 CFR part 3.

#### § 783.41 "Numbered" vessel.

A vessel "numbered under the laws of the United States" means a vessel numbered pursuant to the provisions of Federal law, including vessels numbered under any State numbering system approved by the Secretary of the Department under which the U.S. Coast Guard is operating, in accordance with section 2(c) of the Federal Boating Act of 1958 (46 U.S.C. 527-527h). Generally, any vessel, which is not required to have and does not have, a valid marine document issued by the Bureau of Customs and is propelled by machinery of more than 10 horsepower, whether or not such machinery is the principal source of propulsion, is required to be numbered in conformity with the Federal Boating Act of 1958 if it uses the navigable waters of the United States, its Territories, or the District of Columbia, or is owned in a State and uses the high seas (46 U.S.C. 527(a)). The requirements and procedures of this Act are explained in detail in 46 CFR part 170.

#### § 783.42 Vessels neither "documented" nor "numbered".

An "American vessel" on which employment as a seaman is subject to the minimum wage under the provisions of section 6(b)(2) and section 13(a)(14) is not limited by the language of the Act to those vessels which are "documented" or "numbered" as described above in §§ 783.40 and 783.41. Since the